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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 782

AIR LINE STEWARDS AND STEWARDESSES ASSOCIATION, INTERNATIONAL, AFL-CIO, *Petitioner*,

v.

TRANS WORLD AIRLINES, INC., *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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v.

TRANS WORLD AIRLINES, INC., *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The Air Line Stewards and Stewardesses Association, International, AFL-CIO, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in the above entitled case on December 14, 1959 (Appendix B, *infra*, p. 10a).

OPINIONS BELOW

The opinion of the court below (Appendix C, *infra*, pp. 11a-13a) is not yet reported. The opinion of the district court (R. 23-43) is reported at 173 F. Supp. 369.

JURISDICTION

The judgment of the court below was entered on December 14, 1959 (Appendix B, *infra*, p. 10a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Air Carrier Amendment to the Railway Labor Act, as amended (45 U.S.C. 181, *et seq.*), applies to a carrier by air in its relationship with employees who perform their duties on board American flag airplanes flying between the United States and foreign countries irrespective of their nationality, place hired, place based or place of flight, where both the Federal Aviation Act (72 Stat. 737) and the applicable certificate of convenience and necessity issued by the Civil Aeronautics Board authorizing the flights make compliance with the Air Carrier Amendment to the Railway Labor Act a condition of holding the certificate.

STATUTES AND TREATIES INVOLVED

The pertinent provisions of the Air Carrier Amendment to the Railway Labor Act (49 Stat. 1189, 45 U.S.C. 181, *et seq.*), of the Railway Labor Act, as amended (44 Stat. 577, as amended, 48 Stat. 926, 45 U.S.C. 151, *et seq.*), of the Interstate Commerce Act (49 U.S.C. 1, *et seq.*), of the Civil Aeronautics Act of 1938 (52 Stat. 977, 49 U.S.C. 401, *et seq.*), of the Federal Aviation Act of 1958 (72 Stat. 737, 49 U.S.C.A. 1301, *et seq.*) and of the Chicago Convention on International Civil Aviation of 1944 (61 Stat. 1185) are set forth in Appendix A, *infra*, pp. 1a-9a).

STATEMENT OF THE CASE

This is a suit brought by the Air Line Stewards and Stewardesses Association, International, AFL-CIO, hereinafter called the Association, to require Trans World Airlines, Inc., hereinafter called TWA, to bargain with the Association as the representative of those of TWA's flight stewards and hostesses who are not nationals or residents of the United States (R. 2-9). The jurisdiction of the District Court was invoked (R. 2) under the Act of June 25, 1948, c. 646, 62 Stat. 931, 28 U.S.C. 1337, conferring jurisdiction upon federal district courts of any civil action or proceeding arising under any Act of Congress regulating commerce, the cause of action asserted being one for the violation of certain provisions of the Railway Labor Act, as amended (45 U.S.C. 151, *et seq.*).

The facts as alleged in the complaint (R. 2-9) and admitted by the answer (R. 19-23) are as follows:

TWA is a Delaware corporation which, as a common carrier by air, is engaged in interstate and foreign commerce and transports mail for and is under contract with the United States Government (R. 3, 20). TWA engages in both domestic and international operations, all of which are conducted under certificates of public convenience and necessity issued by the Civil Aeronautics Board, with the approval of the President, pursuant to the terms of Title IV, Section 401, of the Civil Aeronautics Act of 1938 (49 U.S.C. 481), which insofar as here material was reenacted without change in the Federal Aviation Act of 1958 (49 U.S.C.A. 1371, *et seq.*).

TWA's flights to points outside the United States are made under a certificate of public convenience and necessity issued by the Civil Aeronautics Board

on May 16, 1957 and under an order approving change in approved service plan issued by the Civil Aeronautics Board effective September 10, 1957 (R. 4, 10-17, 21). The certificate and order authorize TWA to engage in transportation between named points in the United States and named points in Europe, Africa and Asia (R. 4, 10-17, 21). This certificate makes compliance with the Railway Labor Act a condition upon the holding of the certificate because it expressly makes the authorizations subject to the provisions of Title IV of the Civil Aeronautics Act (R. 10) and one of the provisions of this title (49 U.S.C. 481(*l*))(4)) is that compliance with the Air Carrier Amendment to the Railway Labor Act shall be a condition to the holding of a certificate of public convenience and necessity.

The Association is a labor organization composed of flight pursers, flight stewards, flight stewardesses, flight service attendants and hostesses employed by various carriers by air operating under certificates of public convenience and necessity issued by the Civil Aeronautics Board pursuant to the terms of the Civil Aeronautics Act, as amended (49 U.S.C. 401, *et seq.*) and the Federal Aviation Act of 1958 (49 U.S.C.A. 1371, *et seq.*). The Association was certified by the National Mediation Board on March 6, 1947, as the duly designated and authorized representative for the purposes of the Railway Labor Act, as amended, of all flight stewards and hostesses employed by TWA (R. 3, 9-10, 20). This certification is still in effect and is now and has at all times been accepted by the Association, TWA and the National Mediation Board as fully applicable to TWA (R. 3-4, 20). This certification by its terms certifies the Association as the representative of Flight Stewards and Hostesses em-

ployed by" TWA "for the purposes of the Railway Labor Act", in all inclusive terms without expressing any limitation based on nationality, place hired, place based or place of flight (R. 9-10).

At all times since the National Mediation Board on March 6, 1947, certified the Association, TWA has recognized and bargained collectively with the Association as the representative of all its employees within the craft or class of flight stewards and hostesses who are nationals or residents of the United States (R. 4, 20). However, TWA has refused to accede to the requests of the Association that TWA should recognize and bargain collectively with the Association as the representative of approximately fifty flight stewards and hostesses employed by TWA who are neither nationals nor residents of the United States (R. 5-7, 17-19, 21-22).[1] These flight stewards and hostesses admittedly perform all of their work for TWA on board American flag airplanes registered pursuant to Title V of the Civil Aeronautics Act of 1938, as amended, which was reenacted without material change in the Federal Aviation Act of 1958 (R. 5, 21-22).

When TWA refused to recognize and bargain collectively with the Association as the representative of those persons within the craft or class of flight steward

[1] As appears from the complaint and attached exhibits (R. 5-6, 17-18) the issue here arose because a majority of the flight stewards and hostesses employed by TWA who are neither nationals nor residents of the United States joined the Association, authorized it to represent them and urged it to handle their employment problems with TWA. Since we believe that the certification by the National Mediation Board (R. 9-10) covers these employees and TWA's refusal to recognize and bargain with the Association as their representative is based solely on the inapplicability of the Railway Labor Act (R. 19), it is immaterial that TWA neither admitted nor denied the allegation of majority (R. 22).

and hostess who were not nationals or residents of the United States, the Association filed this suit in the District Court of the United States for the Southern District of New York, alleging that by such refusal TWA had violated Section 2, First, Second, Fourth, Sixth, Seventh and Ninth of the Railway Labor Act, as amended (R. 7-8). The complaint prayed for judgment (R. 8-9):

> 1. Enjoining TWA from refusing to recognize and treat with the Association as the representative of all its flight stewards and hostesses without limitation or qualification based on any employee's citizenship, nationality, residence, place based, or national origin;
>
> 2. Requiring TWA to recognize and treat with the Association as the representative of flight stewards and hostesses who are not citizens and who are not residents of the United States; and
>
> 3. Enjoining TWA from denying flight stewards and hostesses who are not citizens or residents of the United States the same rights and privileges as are accorded by the Railway Labor Act to employees who are citizens or residents of the United States.

The Association filed a motion for judgment on the pleadings and TWA filed a cross-motion for summary judgment (R. 23). In the affidavit filed in support of the cross-motion for summary judgment TWA alleged that the flight stewards and hostesses who are not nationals or residents of the United States perform their services wholly on airplanes flying outside the United States and its territories (R. 63). From the allegations of this affidavit (R. 61-65) and from the copy of the collective bargaining agreement between TWA and the Association (R. 45-47) which was attached to this affidavit (R. 63), it appears that

TWA and the Association have treated American nationals or American residents who are based abroad and perform their services outside the United States as part of the same craft or class as it employees based or working in the United States.

The district court held that the Railway Labor Act did not apply "to employees of TWA who are foreign nationals, based abroad and flying wholly outside the continental United States and its possessions" (R. 28, 40). It accordingly held that the Association was not entitled to the relief requested and that its complaint should be dismissed (R. 23-43). On appeal to the court of appeals, the judgment of the district court was affirmed (Appendix B, *infra*, p. 10a). Both courts held that "it is an accepted canon of construction that the coverage of a federal statute will not extend beyond our national boundaries unless such a legislative intent clearly appears" (Appendix C, *infra*, p. 12a, R. 34-35). Both courts held that no such intent appeared in the Railway Labor Act but rather the intent to limit the application of the Act to the territorial limits of the United States was shown by language which the courts construed as making the coverage of the Railway Labor Act "dependent upon the coverage of the Interstate Commerce Act" (Appendix C, *infra*, p. 13a, R. 32-33). The Interstate Commerce Act is, as the courts pointed out, indisputably limited to transportation within the United States (Appendix C, *infra*, p. 12a, R. 32).

REASONS FOR GRANTING THE WRIT

1. This case presents an important question of federal law which should be settled by this Court, namely: whether the Air Carrier Amendment to the Railway Labor Act, as amended, is limited in its application to

transportation which takes place within the territorial limits of the United States. While the decision below purports to decide merely that the Railway Labor Act does not apply to relationships between an American airline and its employees of foreign nationality who are based abroad and fly wholly outside the continental limits of the United States (Appendix C, *infra*, p. 13a), the necessary result of the decision is to cause American airlines to staff their flights beyond the territorial limits of the United States exclusively with labor paid at lower wages and working under standards below those enjoyed by American workers who are protected in collective bargaining. This is true no matter how the decision below is construed.

If the decision is read as meaning that the Railway Labor Act applies only to transportation within the United States, then American nationals lose its benefits as soon as they leave the boundaries of the United States. If the decision is read as meaning that only foreign nationals who fly beyond our national boundaries are unprotected, then American airlines will hire only the unprotected foreign national to do the flying beyond the territorial limits of the United States. Whichever is the proper construction, American workers will be forced either to submit to substandard rates of pay and working conditions when flying outside the United States or to losing all chance of employment on such flights. This Court pointed out in connection with ships at sea, that the effect of applying American laws protecting workers to only American seamen to the exclusion of foreign seamen serving on American flag ships would be "not unlikely in the long run to diminish hirings in ports of countries that take best care of their seamen." *Lauritzen* v. *Larsen*, 1953, 345 U.S. 571, 588.

The use of only foreign nationals on those segments of flights to and from the United States, which do not involve flying within the territorial limits of the United States is apparent from the record in this case. TWA's director of labor relations, in his affidavit in support of the motion for summary judgment, described American nationals as used on flights between the United States and such points as Paris, France and Rome, Italy (R. 62); foreign hostesses and pursers as used on "intermediate flights between points in Europe, Asia and Africa" (R. 63). All these "intermediate flights" have been authorized by the Civil Aeronautics Board only as segments of flights between named cities in the United States and named cities in Europe, Africa and Asia (R. 10-17). And under our treaty commitments these flights must carry primarily passengers and cargo to and from the United States, with any other passengers and cargo limited to "fill in" unused seats or space arising as part of traffic to and from the United States.[2]

Similarly the record filed in this Court in *Air Line Stewards and Stewardesses Ass'n* v. *Northwest Airlines, Inc.*, No. 429, October Term 1959, showed a displacement of American pursers and stewardesses by foreign pursers and stewardesses on flights between the United States and the Orient motivated primarily by the lower wages and longer hours of foreign nationals (Case No. 429, R. 4-5, 16-17, 29, 46-47). And again in the case of *Air Line Stewards and Stewardesses Ass'n* v. *Braniff Airways, Inc.*, now pending un-

[2] S. Rep. 1875, 84th Cong., 2d Sess., International Air Agreements, Report on Interstate and Foreign Commerce, United States Senate, pp. 7-10, 25; H. A. Wassenbergh, Post-War International Civil Aviation Policy and the Law of the Air, The Hague, Martinus Nijhoff, 1957, pp. 42-44, 53-61.

decided in the United States District Court for the Northern District of Texas, Dallas Division, Civil No. 8390, the Association has filed a suit similar to that in the instant case except that the complaint alleges, and the Braniff has made no specific denial of the allegation, that each of the foreign based pursers and hostesses as part of his or her regular course of employment flies into and out of Miami, Florida as part of each trip and performs part of his or her duties as purser or hostess while the plane is on the ground at Miami International Airport, Florida or in the air over the state of Florida. Braniff in its answer has taken the position that the Railway Labor Act has no application to these foreign nationals because they are hired and based outside the United States. The facts alleged in the complaint show that in previous years Braniff's flights outside the United States were staffed with pursers and hostesses covered by its collective bargaining agreement with the Association.

The displacement of workers protected by American laws guaranteeing collective bargaining, by workers at substandard rates as a result of the belief of carriers by air that their operations outside the territorial limits of the United States are not subject to the Railway Labor Act, has ramifications over and above the transfer of jobs on airlines from workers enjoying collectively bargained standards to those not so enjoying such standards. Displacement of sea travel by air travel means many additional persons who would otherwise have worked at collectively bargained standards on ship have in economic reality been displaced. Preliminary figures for the fiscal year ending June 30, 1959 issued by the Immigration and Naturalization Service, Department of Justice, show that

in that year 4,067,960 passengers by air arrived or departed in the United States exclusively of travel over land borders, as against 1,426,562 passengers by sea, with the percentage so traveling by air 74.[3]

2. The decision below ignored completely Section 401(k)(4) of the Federal Aviation Act of 1958, which insofar as here material is a reenactment without change, except in numbering of the subsection, of Section 401(1)(4) of the Civil Aeronautics Act of 1938. Section 401(a) of both statutes prohibits an air carrier from engaging in any air transportation unless there is in force a certificate issued by the Board authorizing such air carrier to engage in such transportation. A certificate is required for all transportation outside as well as within the United States as appears from the specifications with respect to designation of terminal and intermediate points "insofar as the operation is to take place without the United States" (Section 401(f) of the Civil Aeronautics Act and Section 401(e) of the Federal Aviation Act). Section 401(k)(4) provides:

> "It shall be a condition upon the holding of a certificate by any carrier that such carrier shall comply with Title II of the Railway Labor Act, as amended."

Title II of the Railway Labor Act is the Air Carrier Amendment.

Other paragraphs of Subsection (k) of Section 401 of the Federal Aviation Act show that Congress expressly had overseas and foreign operations in mind in connection with protecting the labor conditions of

[3] Federal Aviation Agency, FAA Statistical Handbook of Aviation, 1959 ed. (Gov't Print. Off., 1959), p. 96.

employees of air carriers. For instance Paragraph (2) of Subsection (k) of Section 401 provides:

> "Every air carrier shall maintain rates of compensation for all pilots and copilots who are engaged in overseas or foreign air transportation * * * which shall be not less, upon an annual basis, than the compensation required to be paid under said decision 83 for comparable service to pilots and copilots engaged in interstate air transportation within the continental United States."

In addition to intrinsic evidence apparent on the face of the Federal Aviation Act itself that Congress intended to make compliance with the Railway Labor Act a condition to a certificate authorizing flights outside the United States as well as within, the legislative history shows that the primary object of including this provision was to make it possible to enforce application of the Railway Labor Act with respect to operations of American air carriers occurring beyond the territorial limits of the United States. The Air Line Pilots Association sponsored the enactment of what is now paragraph 4 of Section 401(k) of the Federal Aviation Act. Its reasons for doing so were repeatedly stated during the hearings by its then president, David L. Behncke. In the Hearings, Senate, Subcommittee of Committee on Interstate and Foreign Commerce, on S. 3659, 75th Cong., 3rd Sess., he stated (at pp. 48, 64-65):

> "Our association represents both domestic and foreign air pilots. * * *
>
> "One of the principal purposes behind this paragraph is to secure better compliance with the Railway Labor Act insofar as domestic carriers are concerned, but the principal purpose is to leave no doubt as to its applicability to foreign

operations, especially insofar as compliance is concerned."

Again in Hearings before Committee on Interstate and Foreign Commerce, Senate, on S. 3845, 75th Cong., 3d Sess., Mr. Behncke testified (at p. 293):

"The operators have objected very strenuously to the inclusion of this section, and they say that it is superfluous. The pilots disagree because this section applies not only to pilots but to all other air workers and will be especially beneficial to American pilots and other American personnel working for the Pan American and other Foreign American operations. The reason for this is a very simple one."

"It is not always possible to enforce American laws in foreign countries even though American companies are financed by American dollars. It is, however, very easy to enforce a condition of a contract or a certificate of convenience and necessity because then you combat the situation through the purse strings of the United States Treasury which is paying the bill. In other words, this provision of the pilots' proposed amendment to S. 2 makes compliance with the Railway Labor Act a condition of the holding of a certificate of convenience and necessity.

"Summarizing this means that American companies engaged in foreign operations financed by American capital will be forced to give American workers a square deal * * * The inclusion * * * would result in orderly development of the industry in both foreign and domestic operations and prevent serious labor troubles.

"* * * the pilots section will act as a bulwark both here and abroad."

To the same effect see Hearings before Committee on Interstate and Foreign Commerce, House, on H.R.

9738, 75th Cong., 2d Sess., p. 237; Hearings before Committee on Interstate and Foreign Commerce, House, on H.R. 5234, 75th Cong., 1st Sess., p. 213; Hearings Senate Subcommittee on Interstate and Foreign Commerce on S. 2, 75th Cong., 1st Sess., p. 585.

If there is any question as to the intent of Congress when it enacted the Air Carrier Amendment to the Railway Labor Act, to reach employees flying or living abroad, Congress by enacting Section 401(k)(4) of the Federal Aviation Act certainly either manifested its understanding that the Air Carrier Amendment had that reach or intended to amend it to be coextensive with the certificates of public necessity and convenience issued by the Civil Aeronautics Board. Section 401(k)(4) would result in the Civil Aeronautics Board revoking certificates for failure to comply with the Railway Labor Act in situations where the National Mediation Board had no power to apply the Act, unless the Air Carrier Amendment is construed with this breadth.

Two interrelated statutes must be construed together to give full effect to the latest expression of Congressional intent. *Southern S. S. Co.* v. *N.L.R.B.*, 1942, 316 U. S. 31. In that case this Court held that the National Labor Relations Act must be construed in a manner consistent with Federal Statutes punishing mutinies occurring on vessels in ports, rivers and harbors of foreign countries. This Court stated (at p. 47):

> "It is sufficient in this case to observe that the Board has not been commissioned to effectuate the policies of the labor Relations Act so single-mindedly that it may wholly ignore other and equally important Congressional objectives. Frequently the entire scope of Congressional purpose

calls for careful accommodation of one statutory scheme to another, and it is not too much to demand of an administrative body that it undertake this accommodation without excessive emphasis upon its immediate task."

This Court has held that the Norris-LaGuardia Act had the effect of amending the criminal provisions of the Sherman Act (*United States* v. *Hutcheson*, 1941, 312 U.S. 219) so it must either be held that the Air Carrier Amendment as originally enacted applies to employees abroad or that it was amended by Section 401(k)(4) to so apply.

Congressional committees in subsequent years have expressed their understanding that American airlines are to observe American standards of labor in their international operations. This position was recently stated by the Senate Committee on Interstate and Foreign Commerce[4] as follows:

> "The United States, as the leader of the free world, has a duty both to itself and to others to maintain a strong international air transport system, and at reasonable cost to the tax payers. Under the American system, this should be accomplished by private enterprise companies which pay salaries and wages commensurate with the American standard of living."

3. In holding that the Air Carrier Amendment to the Railway Labor Act was dependent upon the Interstate Commerce Act for a definition of its coverage, we believe the court below and the cases which it cited, are in error. We believe these courts fell into this error by using the codification instead of the original enacting statute. In order to avoid the misleading effect

[4] S. Report No. 1875, 84th Cong., 2d Sess., *op. cit.*, p. 24.

of the form codification used, we here quote the relevant portions of the Act of Congress adopting the Air Carrier Amendment (49 Stat. 1189):

> "the Railway Labor Act, approved May 20, 1926, as amended, herein referred to as 'Title I,' is hereby further amended by inserting after the enacting clause 'Title I' and adding the following Title II:
>
> "'Title II
>
> "'Section 201. All of the provisions of title I of this Act, except the provisions of section 3, thereof are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service.
>
> "'Section 202. The duties, requirements, penalties, benefits and privileges prescribed and established by the provisions of title I of this Act, except section 3 thereof, shall apply to said carriers by air and their employees in the same manner and to the same extent as though such carriers and their employees were specifically included within the definition of 'carrier' and 'employee', respectively in section 1 thereof.'"

Congress thus said in plain unequivocal language that the Railway Labor Act was to apply to every carrier by air engaged in foreign transportation and every employee of such carrier. It defined the group to which the Railway Labor Act was to be extended. It expressly excluded applying the definitions of "carrier" and "employee" as set forth in the Railway Labor Act to air carriers and their employees for it

stated the new group was to be included "as though" they "were specifically included within the definitions of 'carrier' and 'employee'," of the original statute. The court below nevertheless held that air carriers and their employees must be strained through the definitions of carrier and employee in the original Act (Appendix C, *infra*, p. 12a). Only by straining air carriers and their employees through the definitions of the original Railway Labor Act it is possible to reach the limitation of the Interstate Commerce Act, that only "transportation * * * within the United States" is covered. But any attempt to strain air carrier and their employees through the definitions of Section 1 of the Railway Labor Act does not lead to the result that only transportation in the United States is covered. Rather it would result in excluding all carriers by air and all employees of all carriers by air from the Railway Labor Act. Section 1, First of the Railway Labor Act provides:

> "The term 'carrier' includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act. * * *"

Since no carrier by air is subject to the Interstate Commerce Act, no carrier by air would be covered by the Railway Labor Act.

Section 1, Fifth of the Railway Labor Act provides:

> "The term 'employee' as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the

authority which is conferred upon it to enter orders amending or interpreting such orders: * * *"

Since no employee or subordinate official of any carrier by air performs any work defined as that of an employee or subordinate official in any orders of the Interstate Commerce Commission now in effect, or which has ever been in effect, and since the Interstate Commerce Commission has no power to make any orders with respect to employees of carriers by air, no employee of any carrier by air would be covered by the Railway Labor Act.

When Congress went out of its way in the Air Carrier Amendment to specify that it wanted to add to the group already covered by the Railway Labor Act, the additional group composed of air carriers engaged in "foreign commerce", a phrase not present in the original Railway Labor Act, Congress by the use of the term "foreign commerce" indicated that it envisioned extending the benefits of that Act to a world wide air fleet which knew no national boundaries. To attempt to carve out, and apply the Railway Labor Act only to, a territorial segment of that world wide air operation is anachronistic. It is also out of harmony with the long line of decisions by this Court and lower federal courts holding that the Sherman Act, the Lanham Trade Mark Act and the Fair Labor Standards Act apply to business operations of American companies conducted outside the physical boundaries of the United States. *Steele* v. *Bulova Watch Co., Inc.*, 344 U.S. 280, 282, 285-286; *United States* v. *Timken Roller Bearing Co.*, 341 U.S. 593, 599, modifying 83 F. Supp. 284; *Holophone Co., Inc.* v. *United States*, 352 U.S. 903, affirming 119 F. Supp. 114; *Vermilya-*

Brown Co. v. *Connell*, 335 U.S. 377, 389-390; *United States* v. *Aluminum Co. of Am.*, 2 Cir., 1945, 148 F. 2d 416; *Ramirez & Feraud Chili Co.* v. *Las Palmas Food Co.*, S.D. Calif., 1956, 146 F. Supp. 594, affirmed 9 Cir., 235 F. 2d 874; *United States* v. *R. P. Oldham Co.*, N.D. Calif. S.D. 1957, 152 F. Supp. 818, 821-822; *United States* v. *Imperial Chemical Industries*, S.D. N.Y. 1951, 100 F. Supp. 504, 592, supplemented, 105 F. Supp. 215; *United States* v. *National Lead Co.*, S.D. N.Y. 1945; 63 F. Supp. 513, 514; *United States* v. *General Electric Co.*, S.D.N.J., 1949, 82 F. Supp. 753, 842, 847.

4. The reliance by the court below (Appendix C, *infra*, p. 12a) upon the canon of construction stated in *Foley Bros.* v. *Filardo*, 336 U.S. 281, that the coverage of a federal statute will not extend beyond our national boundaries unless such a legislative intent clearly appears, was misplaced. Rather this case falls within the principle stated by this Court in *Romero* v. *International Term. Co.*, 358 U.S. 354, 382; *Benz* v. *Compania Naviera Hidalgo*, 353 U.S. 138, 143, n. 5; *Lauritzen* v. *Larsen*, 345 U.S. 571, 584-585, that Congressional enactments, in fields where the law of the flag governs, are to be applied not according to physical boundaries but according to international concepts of jurisdiction. This Court expressly rejected the necessity for a specific Congressional direction that a statute be so applied. In *Romero* this Court pointed out that the "principles on which" *Lauritzen* "was decided did not derive from the terms of that statute" (358 U.S. at 382).

We believe that there can be no doubt but what international law recognizes the right of each state to apply the law of the flag to airplanes in substantially

the same manner as it is applicable to ships at sea.[5] With respect to the law which should govern the internal economy of the aircraft, it has even been agreed that the law of the flag governs when the aircraft is standing on foreign territory during a landing, as well as when it is flying over that territory. J. M. Spaight, Aircraft in Peace and the Law (1919), pp. 129-130. Compare Draft Convention on Jurisdiction with respect to Crimes, prepared as part of the Codification of International Law by the Advisory Committee on the Research in International Law under the auspices of Harvard Law School, Supplemental 1935, 29 Am. Journal of International Law, pp. 435, 508-517; International Law Association, Report of the 33rd Conference, Stockholm, 1924, London, Sweet & Maxwell, 1925, pp. 117-118; M. Lemaine, Traite de Droit Aerien (1947), pp. 201-207, 794-800.

At the time Congress enacted the Air Carrier Amendment to the Railway Labor Act in 1936, our nation was already a party to treaties establishing the law of the flag as the governing principle in respect to allocation of jurisdiction over airplanes engaged in international transport. See for instance the Pan American Convention on Commercial Aviation signed at Havana on February 20, 1928 (47 Stat. 1903).

While none of the nations, except the United States, whose territory is flown over or landed upon, by the flights of TWA, was a party to the Pan American Convention, all of these nations are parties to the Chicago Convention on International Civil Aviation

[5] Demonstration of this point would require the listing of the innumerable statutes and treaties adopting this principle. Illustrative is the British Nationality Act of 1948, Sec. 32 (5) which provides that a person born on an aircraft shall be deemed to have been born in the place of registration of that aircraft.

of 1944 (61 Stat. 1180, 4 U.S.T. 1949) which similarly provided for the law of the flag as the basic principle for governing conduct aboard an airplane in international operations. See H. P. Honig, The Legal Status of Aircraft, The Hague, Martinus Nijhoff, 1956, pp. 100, 102-109, 136, 191.

The law of the flag as developed with respect to seagoing vessels and its applicability to labor relations between crew and ship owner have been fully set forth in recent decisions by this Court. *Romero* v. *International Term. Co.*, 358 U.S. 354, 382-384; *Lauritzen* v. *Larsen*, 345 U.S. 571, 584-585; *Benz* v. *Compania Naviera Hidalgo*, 353 U.S. 138, 143, n. 5. The American cases uniformly hold that the law of the flag governs wages, hours and terms of employment. *The Belgenland*, 114 U.S. 365, 367; *The Hanna Nielsen*, 2 Cir. 1921, 273 Fed. 171, 172; *McQuade* v. *Compania de Vapores San Antonio, S.A.*, S.D. N.Y. 1955, 131 F. 365, 366-367; *Grivas* v. *Alianza Compania Armadora*, S.D. N.Y. 1957, 150 F. Supp. 708, 711-712; *Rodriquez* v. *Gerontas Compania de Navegacion*, S.D. N.Y. 1957, 150 F. Supp. 715, 718; 720-722; *Evangelinos* v. *Andreavapor Cia. Nav.*, S.A., S.D. N.Y., 1958, 162 F. Supp. 520, 521-522. The foreign seaman is "entitled to the protection and benefits of all the laws passed by Congress on behalf of American seamen." *In re Ross*, 140 U.S. 452, 472. *Cf: The Blakeley*, D.C. W.D. Wash. N.D., 1916, 234 Fed. 959, 961; *Taylor* v. *Atlantic Maritime Co.*, 2 Cir., 1950, 179 F. 2d 597; *Carroll* v. *United States*, 2 Cir., 1943, 133 F. 2d 690.

The National Labor Relations Board has applied the National Labor Relations Act to all members of crews of American owned ships of American registry. It has voted all members of the crew, including aliens, by

mail ballots conducted even in distant ports. E.g., *Cities Service Oil Co.*, 87 N.L.R.B. 324, 331. It appeared in an affidavit filed in support of a petition to enjoin the election in that case that one of the vessels was in continuous trade between two foreign ports. Affidavit of M. J. Adkins, Marine Superintendent of Cities Service Oil Co., p. 3, filed in *Cities Service Oil Co.* v. *Douds*, U.S. D.C. S.D. N.Y. Civ. 49-229. The employees on this ship were voted by mail in a distant port. 87 N.L.R.B. at 326, n. 5, 327, n. 6, 330, n. 12.

CONCLUSION

In the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

1.

The Air Carrier Amendment to the Railway Labor Act

The relevant provisions of the Air Carrier Amendment (49 Stat. 1189, 45 U.S.C. 181, *et seq.*), to the Railway Labor Act, are as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled*, That the Railway Labor Act, approved May 20, 1926, as amended, herein referred to as 'Title I', is hereby further amended by inserting after the enacting clause 'Title I' and by adding the following title II:

"'Title II

"'Section 201. All of the provisions of title I of this Act, except the provisions of section 3 thereof are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service.

"'Section 202. The duties, requirements, penalties, benefits and privileges prescribed and established by the provisions of title I of this Act, except section 3 thereof, shall apply to said carriers by air and their employees in the same manner and to the same extent as though such carriers and their employees were specifically included within the definition of 'carrier' and 'employee', respectively in section 1 thereof.'".

2.

The Railway Labor Act, as amended

The relevant provisions of the Railway Labor Act, as amended (44 Stat. 577, 48 Stat. 926, 45 U.S.C. 151, *et seq.*) are as follows:

"Title I

"Definitions

"Section 1. When used in this Act and for the purpose of this Act—

"First. The term 'carrier' includes any express company, sleeping car company, carrier by railroad, subject to the Interstate Commerce Act, * * *

* * * * * *

"Fifth. The term 'employee' as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders. * * *

* * * * *

"Section 2. * * *

"General Duties

* * * * *

"First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to com-

merce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

"Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

"Fourth. * * * The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. * * *

* * * * *

"Sixth. In case of a dispute between a carrier or carriers and its or their employees, a rising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held; * * *

"Seventh. No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act.

* * * * *

"Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board upon request of either party to the dispute, to investigate such dispute and to certify to both

parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. * * *"

3.

INTERSTATE COMMERCE ACT, AS AMENDED.

The relevant provisions of the Interstate Commerce Act, as amended (24 Stat. 379, 49 U.S.C. 1, *et seq.*) are as follows:

"Section 1. (1) The provisions of this Act shall apply to common carriers engaged in—

"(a) The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment; or

"(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by railroad or by water—

"From one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, from one place in a Territory to another place in the same Territory, or from any place in the United States through a foreign country to any other place in the United States, or from or to any place in the United States to or from a foreign country, but only insofar as such transportation or transmission takes places within the United States.

"(2) The provisions of this Act shall also apply to such transportation of passengers and property and transmission of intelligence, but only in so far as such transportation or transmission takes place within the United States, * * *"

4.

THE CIVIL AERONAUTICS ACT OF 1938

The relevant provisions of the Civil Aeronautics Act of 1938 (52 Stat. 977, 49 U.S.C. 401, *et seq.*) are as follows:

"Title IV

"Air Carrier Economic Regulation

"Certificate of Public Convenience and Necessity

"Certificate Required

"Section 401. (a) No air carrier shall engage in any air transportation unless there is in force a certificate issued by the Board authorizing such air carrier to engage in such transportation: * * *

* * * * *

"Terms, Conditions and Limitations

"(f) Each certificate issued under this section shall specify the terminal points and intermediate points, if any, between which the air carrier is authorized to engage in air transportation and the service to be rendered; and there shall be attached to the exercise of the privileges granted by the certificate, or amendment thereto, such reasonable terms, conditions, and limitations as the public interest may require. A certificate issued under this section to engage in foreign air transportation shall, insofar as the operation is to take place without the United States, designate the terminal and intermediate points only insofar as the Board shall deem practicable, and

otherwise shall designate only the general route or routes to be followed. * * *

* * * * *

"Compliance With Labor Legislation

"(1) (1) Every air carrier shall maintain rates of compensation, maximum hours, and other working conditions and relations of all of its pilots and copilots who are engaged in interstate air transportation within the continental United States (not including Alaska) so as to conform with decision numbered 83 made by the National Labor Board on May 10, 1934, notwithstanding any limitation therein as to the period of its effectiveness.

"(2) Every air carrier shall maintain rates of compensation for all of its pilots and copilots who are engaged in overseas or foreign air transportation or air transportation wholly within a Territory or possession of the United States, the minimum of which shall be not less, upon an annual basis, than the compensation required to be paid under said decision 83 for comparable service to pilots and copilots engaged in interstate air transportation within the continental United States (not including Alaska).

"(3) Nothing herein contained shall be construed as restricting the right of any such pilots or copilots, or other employees, of any such air carrier to obtain by collective bargaining higher rates of compensation or more favorable working conditions or relations.

"(4) It shall be a condition upon the holding of a certificate by any air carrier that such carrier shall comply with title II of the Railway Labor Act, as amended.

* * * * *

"Title V

"Nationality and Ownership of Aircraft

"Registration of Aircraft Nationality

"Section 501. (a) It shall be unlawful for any person to operate or navigate any aircraft eligible for registration if such aircraft is not registered by its owner as provided in this section, or (except as provided in section 1107 of this Act) to operate or navigate within the United States any aircraft not eligible for registration: . . .

. . . . . .

"(c) Upon request of the owner of any aircraft eligible for registration, such aircraft shall be registered by the Administrator of Civil Aeronautics and the Administrator of Civil Aeronautics shall issue to the owner thereof a certificate of registration.

. . . . . .

"(f) Such certificate shall be conclusive evidence of naitonality for international purposes, but not in any proceeding under the laws of the United States. Registration shall not be evidence of ownership of aircraft in any proceeding in which such ownership by a particular person is, or may be, in issue."

5.

FEDERAL AVIATION ACT OF 1958

The relevant provisions of the Federal Aviation Act of 1958 (72 Stat. 737, 49 U.S.C.A. 1301, *et seq.*) are as follows:

"Title IV

"Air Carrier Economic Regulation

"Certificate of Public Convenience and Necessity

"Certificate Required

"Section 401. (a) No air carrier shall engage in any air transportation unless there is in force a certificate issued

by the Board authorizing such air carrier to engage in such transportation.

* * * * *

"Terms, Conditions And Limitations

"(c) Each certificate issued under this section shall specify the terminal and intermediate points, if any, between which the air carrier is authorized to engage in air transportation and the service to be rendered; and there shall be attached to the exercise of the privileges granted by the certificate, or amendment thereto, such reasonable terms, conditions and limitations as the public interest may require. A certificate issued under this section to engage in foreign air transportation shall, insofar as the operation is to take place without the United States, designate the terminal and intermediate points only insofar as the Board shall deem practicable, and otherwise shall designate only the general route or routes to be followed. * * *

* * * * *

"Compliance With Labor Legislation

"(k) (1) Every air carrier shall maintain rates of compensation, maximum hours, and other working conditions and relations of all of its pilots and copilots who are engaged in interstate air transportation within the continental United States (not including Alaska) so as to conform with decision numbered 83 made by the National Labor Board on May 10, 1934, notwithstanding any limitation therein as to the period of its effectiveness.

"(2) Every air carrier shall maintain rates of compensation for all of its pilots and copilots who are engaged in overseas or foreign air transportation or air transportation wholly within a Territory or possession of the United States, the minimum of which shall not be less, upon an annual basis, than the compensation required to be paid under said decision 83 for comparable service to pilots and

copilots engaged in interstate air transportation within the continental United States (not including Alaska).

"(3) Nothing herein contained shall be construed as restricting the right of any such pilots or copilots, or other employees, of any such air carrier to obtain by collective bargaining higher rates of compensation or more favorable working conditions or relations.

"(4) It shall be a condition upon the holding of a certificate by any carrier that such carrier shall comply with title II of the Railway Labor Act, as amended.

* * * * *

"Title V

"Nationality and Ownership of Aircraft

"Registration of Aircraft Nationality

"Section 501. (a) It shall be unlawful for any person to operate or navigate any aircraft eligible for registration if such aircraft is not registered by its owner as provided in this section, or (except as provided in section 1108 of this Act) to operate or navigate within the United States any aircraft not eligible for registration: * * *

* * * * *

"(c) Upon request of the owner of any aircraft eligible for registration, such aircraft shall be registered by the Administrator and the Administrator shall issue to the owner thereof a certificate of registration.

* * * * *

"(f) Such certificate shall be conclusive evidence of nationality for international purposes, but not in any proceeding under the laws of the United States. Registration shall not be evidence of ownership of aircraft in any proceeding in which such ownership by a particular person is, or may be, in issue."

6.

THE CHICAGO CONVENTION ON INTERNATIONAL CIVIL AVIATION OF 1944

The relevant provisions of the Chicago Convention on International Civil Aviation of 1944 (61 Stat. 1185) are, as follows:

"Article 17

"Aircraft have the nationality of the State in which they are registered."

APPENDIX B

(Judgment.)

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the fourteenth day of December one thousand nine hundred and fifty-nine.

Present:

HON. CHARLES E. CLARK,
HON. STERRY R. WATERMAN,
HON. LEONARD P. MOORE,
Circuit Judges.

AIR LINE STEWARDS AND STEWARDESSES ASSOCIATION, INTERNATIONAL, an unincorporated labor organization, *Plaintiff-Appellant,*

v.

TRANS WORLD AIRLINES, INC., a corporation,
Defendant-Appellee.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed, with costs to the appellee.

A. Daniel Fusaro
Clerk

APPENDIX C

(Opinion.)

United States Court of Appeals for the Second Circuit

No. 49—October Term, 1959

(Argued November 30, 1959 Decided December 14, 1959)

Docket No. 25652

Air Line Stewards and Stewardesses Association, International, an unincorporated labor organization, *Plaintiff-Appellant*,

v.

Trans World Airlines, Inc., a corporation, *Defendant-Appellee*.

Before:

Clark, Waterman and Moore, *Circuit Judges*.

Plaintiff appeals from the denial below of its motion for judgment on the pleadings and from the granting of defendant's motion for summary judgment, United States District Court for the Southern District of New York, Herlands, *J*. Affirmed.

Sturm and Perl, Leibik and Weyand (Alan F. Perl, Lee Leibik, Ruth Weyand, of counsel), *for Plaintiff-Appellant*.

Chadbourne, Parke, Whiteside & Wolff (Edward R. Neaher, of counsel), *for Defendant-Appellee*.

PER CURIAM:

Air Line Stewards and Stewardesses Association International is the certified bargaining representative for the purposes of the Railway Labor Act, as amended,[1] of the flight stewards and hostesses employed by Trans World Airlines, Inc. (TWA). It brought action seeking an injunction against TWA to require it to bargain with the plaintiff with respect to some fifty flight hostesses and stewards, not nationals of the United States or resident here, and who, based abroad, were employed by TWA solely in connection with TWA flights outside the continental United States and its possessions.

TWA admitted all the plaintiff's allegations. The plaintiff moved for judgment on the pleadings. The defendant filed a cross-motion for summary judgment. The district court granted defendant's cross-motion, dismissed the complaint and filed a learned opinion, reported at F. Supp.

As the district court pointed out in the opinion below, it is an accepted canon of construction that the coverage of a federal statute will not extend beyond our national boundaries unless such a legislative intent clearly appears. *Foley Bros. Inc.* v. *Falando*, 336 U.S. 281. The statute here involved demonstrates no such intent. Indeed, it discloses a contrary one. The Interstate Commerce Act (49 U.S.C. Chapter 1) is limited in its application to common carriers engaged in interstate and foreign transportation "but only in so far as such transportation * * * takes place

[1] 45 U. S. C. § 151 *et seq.* 45 U. S. C. § 151 provides: "The term 'carrier' includes any * * * carrier by railroad, subject to the Interstate Commerce Act * * * "

Title II of the Railway Labor Act, approved April 10, 1936, 45 U. S. C. §§ 181-188, extended the coverage of the Act so as to include (with exceptions not of moment here) common carriers by air and their employees. § 181 provides: "All of the provisions of Section 151 * * * are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce * * * "

within the United States" (49 U.S.C. §§ 1(1)(a), 1(2)). The coverage of the Railway Labor Act as amended (see fn. 1), being dependent upon the coverage of the Interstate Commerce Act was therefore held by the National Mediation Board not to extend beyond the United States. This determination was upheld by the Court of Appeals of the District of Columbia. *Air Line Dispatchers Association* v. *National Mediation Board*, 189 F. 2d 685 (1951), *cert. denied*, 342 U.S. 849 (1951). Plaintiff, being certified for the purposes of the Railway Labor Act, may not represent foreign nationals, foreign-based exclusively employed in foreign areas. The Eighth Circuit is an agreement. *Air Line Stewards and Stewardesses Ass'n International* v. *Northwest Airlines*, 267 F. 2d 170 (8 Cir. 1959), *cert. denied*, 28 U.S. Law Week 3165 (1959).

Affirmed.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 782

AIR LINE STEWARDS AND STEWARDESSES ASSOCIATION, INTERNATIONAL, AFL-CIO,

Petitioner,

—v.—

TRANS WORLD AIRLINES, INC.,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 782

AIR LINE STEWARDS AND STEWARDESSES ASSOCIATION, INTERNATIONAL, AFL-CIO,

Petitioner,

—v.—

TRANS WORLD AIRLINES, INC.,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Respondent Trans World Airlines, Inc. ("TWA") submits this brief in opposition to the petition of Air Line Stewards and Stewardesses Association International, AFL-CIO ("ALSSA") for a writ of certiorari.

Question Presented

The basic question presented by petitioner is whether the Railway Labor Act, 45 U. S. C. §§151, *et seq.*, as amended to include common carriers by air engaged in interstate or foreign commerce, 45 U. S. C. §§181, *et seq.*, covers the employees of such a carrier who are hired outside the continental United States and its territories and who perform their services wholly outside the continental United States and its territories.

This same question was recently presented to this Court by petitioner in *Air Line Stewards and Stewardesses As-*

sociation, International v. *Northwest Airlines, Inc.*, No. 429 (October Term 1959) and found unworthy of review (361 U. S. 901).

Statutes Involved

Respondent will cite provisions of the Air Carrier Amendment of the Railway Labor Act (49 Stat. 1189, 45 U. S. C. §§181, *et seq.*), of the Railway Labor Act, as amended (44 Stat. 577, as amended, 48 Stat. 926, 45 U. S. C. §§151, *et seq.*), of the Interstate Commerce Act (49 U. S. C. §§1, *et seq.*), of the Civil Aeronautics Act of 1938 (52 Stat. 977, 49 U. S. C. §§401, *et seq.*), and of the Federal Aviation Act of 1958 (72 Stat. 737, 49 U. S. C. A. §§1301, *et seq.*), set forth in petitioner's Appendix A.

Statement of the Case

TWA is a certificated common carrier by air engaged in interstate and foreign commerce (R. 4, 10-17, 21), and, as such, is subject to the Railway Labor Act, as amended to include common carriers by air, 45 U. S. C. §181. ALSSA is a labor union that has been designated by the National Mediation Board since 1947 to represent flight stewards and hostesses employed by TWA "for the purposes of the Railway Labor Act" (R. 3, 9-10, 20). The scope of that designation has been mutually agreed upon by the parties in all labor agreements since 1947 as follows:

> "The Air Line Stewards and Stewardesses Association, International, has been certified by the National Mediation Board as the designated and authorized representative of the hostesses and flight pursers in the employ of the Company *who are nationals or residents of the United States*, for the purposes of the Railway Labor Act, as amended." (Emphasis supplied.) (R. 63)

TWA has from time to time employed flight stewards (or pursers) and hostesses, who are foreign nationals, residing outside the continental United States and its territories. These employees serve only on TWA planes departing, flying and landing outside the continental United States and its territories. At the time this action was filed TWA had approximately 50 such persons in its employ.

TWA refused ALSSA's request that TWA bargain with ALSSA as the designated representative of the above-mentioned foreign stewards and hostesses (R. 5-7, 17-19, 21-22). ALSSA thereupon commenced this suit in the United States District Court for the Southern District of New York, alleging that TWA by its refusal had violated the Railway Labor Act and requesting that the alleged violations be enjoined (R. 2, 8-9).

After answer, ALSSA filed a motion for judgment on the pleadings and TWA filed a cross-motion for summary judgment (R. 23). The District Court denied plaintiff's motion for judgment on the pleadings and granted TWA's motion for summary judgment, holding that the Railway Labor Act was inapplicable to foreign nationals residing abroad and flying on TWA planes wholly outside the continental United States and its territories (R. 23-43). On appeal, the decision of the District Court was affirmed *per curiam* by the Court of Appeals for the Second Circuit (R. 70-72).

Reasons for Denying the Writ

I. *The Basic Question Has Been Settled by the Courts of Appeal.*

The Courts of Appeal that have passed on the question presented are unanimous in holding that the Railway Labor Act, as amended to apply to common carriers by air engaged in interstate or foreign commerce, does not cover

the employees of such carriers who are employed and perform their services wholly outside the continental United States and its territories. *Air Line Stewards and Stewardesses Association, International* v. *Trans World Airlines, Inc.*, 273 F. 2d 69 (2d Cir. 1959); *Air Line Stewards and Stewardesses Association, International* v. *Northwest Airlines, Inc.*, 267 F. 2d 170 (8th Cir. 1959), *cert. den.*, 361 U. S. 901 (1960); *Air Line Dispatchers Association* v. *National Mediation Board*, 189 F. 2d 685 (D. C. Cir.), *cert. den.*, 342 U. S. 849 (1951). The National Mediation Board, the administrative agency charged with the administration of the Air Carrier Amendment to the Railway Labor Act, reached the same conclusion after a public hearing. This decision was affirmed in the *Air Line Dispatchers* case, *supra*.

Every contention made by petitioner in its petition for certiorari has been conclusively refuted by these decisions. The question presented having been settled by the lower courts, it is unnecessary for this Court to exercise its jurisdiction.

II. *The Courts of Appeal Have Correctly Decided the Question.*

The Railway Labor Act, as Amended, to apply to air carriers is clear. If it were not, its legislative history and the canons of statutory construction would support the interpretation given it by the Courts of Appeal.

A. Congress itself has recently reconsidered and adhered to its original legislative determination not to apply the Air Carrier Amendment to employees of common carriers by air residing and performing their services wholly outside the continental United States and its territories. After the decision in the *Air Line Dispatchers* case, *supra*, the union took the issue before Congress. In 1954 an omnibus aviation bill, S. 2647, that ultimately led to the Federal Aviation Act of 1958 was introduced in Congress. Section

1201(b)(1) of S. 2647 proposed in behalf of the union to amend Sections 201 and 202 of the Railway Labor Act, 45 U. S. C. §§181 and 182, by providing that "the definition of the term 'employee' set forth in Section 1 of this Act [45 U. S. C. §151] shall not be applicable to this title" [e.g., Title II, Air Carrier Amendment]. The object of the proposed amendment was to include within the coverage of the Air Carrier Amendment employees of air carriers residing and performing their services wholly outside the continental United States and its territories. After extensive hearings the Senate Committee on Interstate and Foreign Commerce concluded that such an amendment should not be adopted. The Committee in its report dealt at length with the settled construction of the statute that petitioner now asks this Court to overrule. The Committee stated in its report:

> "The act as it is presently worded has been interpreted by the National Mediation Board and the courts not to extend to employees of air carriers based outside the continental limits of the United States and its territories. In 1949, the National Mediation Board ruled that title II of the Railway Labor Act does not cover foreign-based employees. The Board's ruling was based on the view that to extend the act to cover employees based abroad would bring this labor legislation into direct conflict with labor laws of foreign countries.*

* Respondent Northwest Airlines, Inc., pointed out in its brief in opposition to the petition for certiorari filed by this petitioner in the case of *Air Line Stewards and Stewardesses Association, International* v. *Northwest Airlines, Inc.*, 267 F. 2d 170 (8th Cir.), *cert. den.*, 361 U. S. 901 (1960); that the Philippine Government had certified the Northwest Airlines Philippine Employees Association (NAPEA) as the exclusive bargaining agent for the employees of Northwest Airlines employed at or out of the Philippine Islands. *Brief in opposition to petition for writ of certiorari to the U. S. Court of Appeals for the 8th Circuit, Air Line Stewards and Stewardesses Association, International* v. *Northwest*, Docket No. 429, p. 2 (October Term 1959).

In addition, the Board held that to attempt application of the Railway Labor Act in a foreign country, rather than the law of the country, would be a challenge to its national sovereignty to govern within its own boundaries. It was noted that the United States would rightly reject any attempt of a foreign government to apply its labor laws in this country. This determination by the National Mediation Board as to the construction of the present language regarding jurisdiction appearing in section 201 of the Railway Labor Act was later upheld by the District of Columbia Court of Appeals in *Air Line Dispatchers Association* v. *National Mediation Board* . . . .

"In addition, it was pointed out in the testimony that an attempt to give extraterritorial effect to the Railway Labor Act would run counter to a long-established doctrine that the labor laws of one country should not be given extraterritorial effect and applied in a foreign country. In order to adopt the amendment proposed, the committee would give our laws an application contrary to the decision of the court mentioned above but also contrary to a long-recognized policy by this country. This would invite the imposition of foreign labor standards upon employees of foreign industry residing in this country.

"The testimony offered was conflicting. Representatives of the Air Line Dispatchers Association, A. F. of L., argued for the application of the Railway Labor Act to employees based abroad, and the spokesman for the Airlines Personnel Relations Conference and the Air Transport Association opposed such amendment for the reasons stated above. On the testimony offered the committee would not be justified in making such a sharp departure from long-established American policy

as is proposed in this bill" * Sen. Doc. No. 163, 83rd Cong., 2nd Sess. Aviation Study 69-70 (1955).

It is, of course, for Congress and not the courts to determine whether the Railway Labor Act should be extended to employees of foreign nationality based abroad and flying wholly outside the continental limits of the United States. Moreover, if there were any ambiguity in the statute, the failure of Congress to adopt legislation specifically designed to overrule a judicial interpretation similar to that here complained of is "persuasive of legislative recognition that the judicial construction is the correct one." *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 488 (1940).

B. Petitioner has taken the position before the lower courts that Title II of the Railway Labor Act (Air Carrier Amendment), 45 U. S. C. §§181, *et seq.*, unlike Title I of the Railway Labor Act, 45 U. S. C. §§151, *et seq.*, expressly extended the application of the Railway Labor Act to every employee of carriers by air engaged in foreign or interstate commerce on a world-wide basis. All three circuit courts, on the contrary, found that both Title II and I of the Railway Labor Act are expressly limited in their territorial scope by Sections (1) and (2) of the Interstate Commerce Act, Subdivision (2) of which provides:

> "The provisions of this chapter shall also apply to such transportation of passengers and property and transmission of intelligence, *but only in so far as such transportation or transmission takes place within the United States* . . . " (Emphasis supplied.)

49 U. S. C. §1 (2). *Air Line Stewards and Stewardesses Association, International* v. *Trans World Airlines, Inc.*,

* This section of the committee report was cited by the 8th Circuit in *Air Line Stewards and Stewardesses Association, International* v. *Northwest Airlines, Inc.*, 267 F. 2d 170, 174-75 (8th Cir. 1959), *cert. den.*, 361 U. S. 901 (1960).

273 F. 2d 69, 70 (2d Cir. 1959); *Air Line Stewards and Stewardesses Association, International* v. *Northwest Air-Lines, Inc.*, 267 F. 2d 170, 173 (8th Cir. 1959), *cert. den.*, 361 U. S. 901 (1960); *Air Line Dispatchers Association* v. *National Mediation Board*, 189 F. 2d 685, 690 (D. C. Cir.), *cert. den.*, 342 U. S. 849 (1951).

Title I is indisputably so limited, 45 U. S. C. §151 (definition of "carrier"). The territorial scope of Title II is expressly aligned with the territorial scope of Title I. Section 201 of Title II, 45 U. S. C. §181, provides in part:

> "All of the provisions of sections 151, 152, and 154-163 of this title are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, ..."

Section 202 of Title II, 45 U. S. C. §182 provides:

> "The duties, requirements, penalties, benefits, and privileges prescribed and established by the provisions of sections 151, 152 and 154-163 of this title shall apply to said carriers by air and their employees *in the same manner and to the same extent* as though such carriers and their employees were specifically included within the definition of 'carrier' and 'employee,' respectively, in section 151 of this title." (Emphasis supplied.)

Section 203 of Title II, 45 U. S. C. §183, provides in part:

> "The services of the Mediation Board may be invoked in a case under sections 181-188 of this title in the same manner and to the same extent as are the disputes covered by section 155 of this title."

Petitioner agrees that under Section 202 of Title II carriers by air and their employees engaged in interstate or foreign commerce should be treated as though they were "carriers" and "employees" within the definitions of those terms in Title I of the Railway Labor Act, 45 U. S. C. §151. However, contrary to all tenets of statutory construction, petitioner reads Section 202 as if the words "in the same manner and to the same extent" were omitted from the section. The inescapable effect of those words is that Section 202 not only adds common carriers by air to the type of carrier covered by the Railway Labor Act but it also makes the territorial coverage of that Act the same for common carriers by air as it is for common carriers by rail.

C. Even if the territorial scope of the Air Carrier Amendment was not expressly limited to the continental United States and its territories, the circuit courts still would have reached the same result since "it is an accepted canon of construction that the coverage of a federal statute will not extend beyond our national boundaries unless such a legislative intent clearly appears." *Air Line Stewards and Stewardesses Association, International* v. *Trans World Airlines, Inc.*, 273 F. 2d 69, 70 (2d Cir. 1959). See also *Air Line Stewards and Stewardesses Association, International* v. *Northwest Airlines, Inc.*, 267 F. 2d 170, 178 (8th Cir. 1959), *cert. den.*, 361 U. S. 901 (1960); *Air Line Dispatchers Association* v. *National Mediation Board*, 189 F. 2d 685, 690 (D. C. Cir. 1951), *cert. den.*, 342 U. S. 849.

This canon of construction has been applied by this Court to a labor statute when the statute used words of universal application. *Foley Bros.* v. *Filardo*, 336 U. S. 281 (1948) ("every contract"). The legislative history, as well as the express language of the Air Carrier Amendment, not only fails to show a clear Congressional intent to give the Air Carrier Amendment world wide application but, on the contrary, demonstrates the intent of Congress was to limit the

territorial scope of the Air Carrier Amendment to the continental United States and its territories. *Air Line Dispatchers Association* v. *National Mediation Board*, 189 F. 2d 685, 690 (D. C. Cir. 1951), *cert. den.*, 342 U. S. 849.

Petitioner rejects this canon of construction as inapplicable to the Air Carrier Amendment on the novel theory that under international law the doctrine of the law of the flag governs the choice of the applicable law and that, therefore, the presumption is that the territorial scope of the statute was intended to reflect this doctrine of international law in accordance with the principles of comity. Or, as petitioner put the proposition somewhat more nakedly in its brief below, the doctrine of the law of the flag accords American-flag airplanes "the status of the territory of the United States for the purposes of applying its labor laws to the crew." *Brief of Air Line Stewards and Stewardesses Association, International*, P. 26, *Air Line Stewards and Stewardesses* v. *Trans World Airlines, Inc.*, 273 F. 2d 69 (2d Cir. 1959). This theory has been rejected by the circuit courts. *Air Line Stewards and Stewardesses Association, International*, 273 F. 2d 69 (2d Cir. 1959); *Air Line Stewards and Stewardesses Association, International* v. *Northwest Airlines, Inc.*, 267 F. 2d 170, 176-178 (8th Cir. 1959), *cert. den.*, 361 U. S. 901 (1960).

As the District Court in the instant case aptly put it, "the maritime analogy is inapplicable." *Air Line Stewards and Stewardesses Association, International* v. *Trans World Airlines, Inc.*, 173 F. Supp. 369, 379 (S. D. N. Y.), *aff'd*, 273 F. 2d 69 (2d Cir. 1959). It is manifest from the very cases the petitioner relies upon that even in the maritime area the doctrine of the law of the flag is not a mechanical rule under which the territorial scope of the maritime laws of the United States will be molded. See *Romero* v. *International Term. Operating Co.*, 358 U. S. 354, 382-384 (1959); *Lauritzen* v. *Larsen*, 345 U. S. 571, 583-592 (1953). See also *Cunard S.S. Co.* v. *Mellon*, 262 U. S. 100 (1923); *Scharran-*

berg v. *Dollar S.S. Co.*, 245 U. S. 122 (1917). The primary justification, of course, for assuming that Congress intended the scope of a maritime statute to be delineated by the law of the flag is the historic acceptance of that doctrine among nations "in reconciling our own with foreign interests and accommodating the reach of our own laws to those of other maritime nations." *Lauritzen* v. *Larsen*, 345 U. S. 571, 577 (1953); *Romero* v. *International Term. Operating Co.*, 358 U. S. 354, 382 (1959).

This justification is totally absent in the aviation industry. Not only is petitioner unable to cite one case in which this doctrine has been applied to the aviation industry, but contrary to petitioner's belief, it is not settled in international law that airplanes are subject to the doctrine of the law of the flag as are ships at sea. See e.g., *Cooper, National Status of Aircraft*, 17 J. Air L., 292, 309-311 (1950); *J. P. Honig, The Legal Status of Aircraft, The Hague Martinus Nijhoff* (1956), p. 135; *McNair, The Law of the Air*, 110-113 (2nd Ed. 1953). The requirement in such treaties as the Chicago Convention on International Civil Aviation of 1944 (61 Stat. 1180) that aircraft have a nationality is not equivalent to providing that the laws of the place of the aircraft's registration will govern all juridical relationships aboard such aircraft. Indeed, Article 1 of the Chicago Convention provides:

> "The contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory." 61 Stat. 1180.

Since the doctrine of the law of the flag has not been adopted by nations as a tool of reconciling jurisdictional conflicts in the field of international aviation, it cannot be assumed that Congress intended the territorial scope of the Air Carrier Amendment to be shaped by this doctrine. Cf.

Romero v. *International Term. Operating Co.*, 358 U. S. 354, 382 (1959). Even if such a presumption did exist it would be overridden by the express language of Section 202 of the Air Carrier Amendment. The acceptance of petitioner's theory would, moreover, have the unfortunate result of having our nation's labor law applied to foreign flight personnel and the foreign nation's labor law applied to foreign ground personnel, a distinction totally unwarranted by the terms of the Air Carrier Amendment. See *Air Line Dispatchers Association* v. *National Mediation Board*, 189 F. 2d 685 (D. C. Cir. 1951), *cert. den.*, 342 U. S. 849.

D. Respondent does not dispute petitioner's claim that Section 401(k)(4) of the Federal Aviation Act of 1958, 49 U. S. C. 1371(k), formerly Section 401(1)(4) of the Civil Aeronautics Act of 1938, conditions a carrier's holding of a certificate upon the carrier complying with Title II of the Railway Labor Act. However, it is difficult to conceive how this section can be viewed as expanding the territorial scope of the Air Carrier Amendment. *Air Line Stewards and Stewardesses Association, International* v. *Trans World Airlines, Inc.*, 173 F. Supp. 369, 378 (S. D. N. Y.), *aff'd* 273 F. 2d 170 (1959). Moreover, ALSSA's own brief (p. 13) shows that the provision was urged by the pilots' union only as a protection for *American* personnel, not the foreign employees involved here.

Petitioner also seeks solace in Paragraph 2 of subsection k of Section 401 of the Federal Aviation Act of 1958, 49 U. S. C. §1371 (k)(2), which deals with rates of compensation for pilots and co-pilots who were engaged in overseas or foreign transportation. If anything, these provisions, as the District Court noted, show

"... a congressional awareness of and intention to differentiate between domestic and 'overseas or foreign air transportation,' and between 'pilots and copilots' and 'other employees.' Where Congress wished to grant specific benefits to selected categories of air carrier employees beyond those rights that are afforded generally by the Air Carrier Amendment to the R. L./A., Congress made explicit provision therefor."

Air Line Stewards and Stewardesses Association, International v. *Trans World Airlines, Inc.*, 173 F. Supp. 369, 378 (S. D. N. Y.), *aff'd* 273 F. 2d 69 (1959).

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 782

AIR LINE STEWARDS AND STEWARDESSES ASSOCIATION, INTERNATIONAL, AFL-CIO, *Petitioner*,

v.

TRANS WORLD AIRLINES, INC., *Respondent*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

REPLY BRIEF OF PETITIONER IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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1. The parties have never agreed upon the scope of the certification of representatives issued by the National Mediation Board. The statement in the Brief in Opposition, p. 2, that they have so agreed is based on the recitation in the recognition clause in the collective bargaining agreements between the parties of the ad-

mitted fact that the Association has been certified to represent nationals or residents of the United States. But nowhere in this recognition clause or elsewhere has the Association ever agreed that these were the only persons it was certified to represent. The certification of the National Mediation Board finds that the Association is authorized to represent "Flight Stewards and Hostesses employed by" TWA (R. 10). There is no limitation stated as to nationality, place of residence, place of flight, or otherwise. The Association has at all times insisted that under this certification it was entitled to recognition for all flight stewards and hostesses whatever their nationality, wherever based and wherever they flew (R. 49, 53). The agreements which limit the recognition which TWA has been willing to accord the Association to nationals or residents of the United States establish only the fact that the Association has been unable to convince TWA that it should accord recognition to the Association for members of the craft or class who are foreign nationals based abroad (R. 49).

Nor have the Association's collective bargaining agreements with TWA been limited to transportation which takes place within the United States. The currently effective agreement contains numerous provisions by their terms applicable to American nationals based abroad and flying abroad (R. 45-47).

2. The National Mediation Board has never ruled that the Railway Labor Act does not apply to foreign nationals residing abroad who serve as members of the crew of an American flag airplane, but rather has declined to do so on the ground that this is a matter for decision by the courts instead of the Board (R. 51-53, 59). The case of *Air Line Dispatchers Association* v.

National Mediation Board, 189 F. 2d 685 (D.C. Cir.), cert. den., 342 U.S. 849 (1951), is relied upon in the Brief in Opposition, p. 4, as the applicable administrative ruling. However, no issue was there presented as to the applicability of the Railway Labor Act to employees performing all their work on board an American flag plane. There the Air Line Dispatchers Association had applied to the National Mediation Board for certification as the representative of flight dispatchers of a company which conducted no operations in the United States. The flight dispatchers performed their work entirely upon foreign soil, were not members of the crew of any airplane and did not perform any of their work upon or within any airplane. In these circumstances the National Mediation Board considered the Railway Labor Act inapplicable and dismissed the petition. The United States Court of Appeals for the District of Columbia Circuit upheld the National Mediation Board's dismissal as proper, saying (at pp. 687, 690):

> "The Company operates and the dispatchers are employed solely outside the continental limits of the United States.
>
> * * *
>
> "Turning to the merits of the decision made by the Board, we agree that the Act does not extend to an air carrier, and its employees located entirely outside the continental United States and its territories."

It is true that both the National Mediation Board and the Court of Appeals in the *Air Line Dispatchers* case did state that the Railway Labor Act is limited in its application to the physical boundaries of the United States. The case, however, did not present, and

no consideration was given to, the issue of the applicability of the Act to crews performing all their services on board American flag airplanes. We believe the opinion in the *Air Line Dispatchers* case must be strictly limited to the facts of that case.

Except for the *Air Line Dispatchers* case we know of no instance in which the National Mediation Board has ever applied the doctrine enunciated by the courts below, that the Railway Labor Act has no application beyond the physical boundaries of the United States. The National Mediation Board has uniformly refused to apply rail coverage standards to airlines. *Matter of Representation of Northwest Airlines, Inc.—Mechanical Department Foremen*, 1948, 2 N.M.B. 19, 24-26. Various instances in which the National Mediation Board has applied the Railway Labor Act to disputes outside the physical boundaries of the United States are set forth in National Mediation Board, 16th Annual Report, p. 53; 17th Annual Report, pp. 14-15; 18th Annual Report, p. 44; 19th Annual Report, pp. 43-44.

3. Congress in enacting the Federal Aviation Act of 1958 did not indicate an intention that the Railway Labor Act should not be applied outside the continental boundaries of the United States. An examination of the pertinent legislative history shows that the Brief in Opposition, p. 4, omits relevant reports in drawing the opposite conclusion. In the House Report (H. Rept. 2360, 85th Cong., 2d Sess., pp. 10-11), in the debate on the floor of Congress (104 Cong. Rec. 16086), and in the Conference Report (H. Rept. 2556, 85th Cong., 2d Sess., p. 90), Congress expressed unequivocally that its reenactment without change of provisions of the Civil Aeronautics Act of 1938 was not to be used by courts as indicating any Congressional in-

tent as to the meaning thereof. Thus, the Conference Report states (p. 90):

> "*Effect of reenactment of provisions of present law.* The committee of conference wishes to make it clear that it endorses, as expressing the intention of the managers on the part of the Senate and the managers on the part of the House, the statements in the House debate, and the House committee report to the effect that Congress does not intend that this reenactment of the Civil Aeronautics Act of 1938 shall constitute legislative adoption of administrative interpretations and practices or of judicial decisions under that act. It is important that there be no doubts on this point, particularly in view of the many legal controversies over the interpretation of the provisions of title IV. * * *
>
> "As stated in the report of the House Committee on this legislation, therefore, the reenactment of provisions now in effect is to be regarded as a completely neutral factor in any question arising hereafter as to the interpretation of the present law or of this new legislation."

Title IV of the Civil Aeronautics Act of 1938, to which the above quotation specifically refers, contained in Section 401 (l) (4) the requirement of compliance with the Air Carrier Amendment to the Railway Labor Act as a condition of every certificate of public convenience and necessity, and in this respect was reenacted without change in the Federal Aviation Act of 1958 (Section 401 (k) (4), 49 U.S.C.A. Supp. 1371 (k) (4)).

Nor are the proceedings in the 83rd Congress relied upon in Brief in Opposition (pp. 4-7) any part of the legislative history of the Federal Aviation Act of 1958. While the Senate Report (S. Rept. 1811, 85th Cong.,

2d Sess., p. 7) and the House Report (H. Rept. 2360, 85th Cong., 2d Sess., pp. 2-3) on the bill which became the Federal Aviation Act of 1958, list certain bills and hearings in earlier Congresses as part of the consideration by Congress of the problem posed by the mid-air collisions in 1958, which necessitated the hurried adoption of a unified aviation system which included control of military as well as civil flights, none of the bills, reports and studies cited in the Brief in Opposion (pp. 5, 7) are mentioned in these reports.

S. 2647, 83rd Cong., 2d Sess., which is the bill cited in the Brief in Opposition (pp. 4-5), contained only one provision to amend the Railway Labor Act, namely, Section 1201 (b) (1), which read as follow:

> "(1) Section 201 of the Railway Labor Act (U.S.C. 1940 edition, title 45, sec. 181), by amending such section to read as follows:
>
> "Section 201. All the provisions of Title I of this Act, except the provisions of Section 3 thereof, are extended to, and shall cover, every air carrier and air contractor, as those terms are defined in the Civil Aeronautics Act of 1944, and every person (including, but not by way of limitation, corporations, joint-stock associations, partnerships and unincorporated associations) which is directly or indirectly owned or controlled by one or more such carriers or contractors, including any receiver, trustee or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of such carrier, air contractor, or other person, and every person who performs any work as an employee or subordinate official of such carrier, such subcontractor, or such other person, and is subject to its continuing authority to supervise and direct the manner of rendition of his service, whether or not such work is in connection with air transporta-

tion or air commerce. The definition of the term 'employee' set forth in Section 1 of this Act shall not be applicable to this title."

The foregoing is the only language in S. 2647, 83rd Cong., 2d Sess., relating in any way to the issues here involved. That a committee of one of the branches of Congress did not approve this provision seems of no relevance.

Nor is there any thing in the quoted Aviation Study made in the 83rd Congress (Br. in Opp. pp. 5-7) directed to personnel working on American flag planes, as to whom American law would seem obviously applicable without any issue of extraterritoriality arising. Furthermore what certain Congressmen in 1955 think a law enacted in 1938 means cannot be considered its "legislative history." *New York* v. *Saper*, 336 U.S. 328, 339, 340; *Guessefeld* v. *McGrath*, 342 U.S. 308, 317; *Wong Yong Sung* v. *McGrath*, 339 U.S. 33, 47.

4. The intent of Congress in making compliance with the Railway Labor Act a condition of all certificates of convenience and necessity was to assure that certificates authorizing operations outside the United States would not be used to undercut standards for American employees through employment of foreigners on other than union terms. The Brief in Opposition, p. 12, argues that the requirement of compliance with the Railway Labor Act by airlines in their foreign operations was designed to protect American personnel, hence it should be construed as not covering employees of foreign nationality. But only by covering employees of American airlines who are of foreign nationality can employees of American nationality be protected

Otherwise the American employee suffers the competition of employees working in the same craft or class at non-union wages and hours (see Petition for Certiorari, pp. 8-11).

Indeed, the plea which moved Congress to make compliance with the Railway Labor Act a condition of each certificate of convenience and necessity began with a statement that the Air Line Pilots' Association had foreign pilots as members and needed this legislation in order to have an effective sanction to use in enforcing observance of the Railway Labor Act outside the physical boundaries of the United States (see hearings quoted Petition for Certiorari, pp. 12-13).

5. The limitation to pilots and co-pilots of the minimum wage provisions applicable in overseas or foreign air transportation set forth in Paragraph 2 of subsection h of Section 401 of the Federal Aviation Act of 1958, affords no basis to assume an intent to protect collective bargaining abroad for pilots and co-pilots but not for other employees. The Brief in Opposition, pp. 12-13, overlooks that the obvious reason the minimum wage provision was limited to pilots and co-pilots was that Congress was adopting the wage provisions of Decision 83 of the National Labor Board as a minimum but that case was concerned only with pilots and co-pilots. (See *Matter of The Air Line Pilots' Wage Dispute*, II N.L.B. 20, decided May 10, 1934.) There had never been any analogous governmental determination of wage standards for hostesses or airline employees other than pilots and co-pilots although Congress in Section 13 of the Air Mail Service Act of 1934 and amendments thereto, named the National Labor Board or its successor in authority as the agency to fix wage

rates for all other employees of airlines as well as for pilots. 48 Stat. 933, 49 Stat. 614.

6. There is nothing in the Railway Labor Act which expressly or impliedly limits its application to the continental United States and its territories. In arguing that the words "in the same manner and to the same extent" appearing in Section 202 of the Railway Labor Act are effective to exclude employees involved in operations of airlines outside the United States (Brief in Opposition, pp. 8-9), TWA not only takes the words out of context but assumes that the Railway Labor Act has some built in limitation to the continental United States. The Air Carrier Amendment does not provide that air carriers and their employees shall be covered in the same manner and to the same extent as railroad employees. It provides that "every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail or under contract with the United States Government and every air pilot or other person who performs any work as an employee" shall be covered "in the same manner and to the same extent as though such carriers and their employees were specifically included within the definition of 'carrier' and 'employee' respectively in section 1."

In other words, all air carriers and all employees are to be added to the group already covered. Since there is not a single word in the Railway Labor Act itself that expressly or impliedly limits the Act to application within the United States, there is no reason the all inclusive language of "every" carrier engaged in "foreign commerce" and "every pilot or other person" employed thereby, should not be given its plain and unambiguous meaning. The only way any limitation to transportation within the United States can be dragged

in, is by reference to the Interstate Commerce Act which is used in defining the rail carriers to be covered. But the Air Carrier Amendment expressly excludes such a limitation on air carriers and their employees when it provides that the group of air carriers and their employees described in Section 201 is to be added to those covered without straining them through the definition applicable to rail carriers and their employees.

7. The doctrine of nationality of aircraft adopted in the Chicago Convention on International Civil Aviation of 1944 (61 Stat. 1185), in other treaties and in Section 501 of the Federal Aviation Act of 1958 (72 Stat. 737) entitles each nation to apply its own laws to govern the internal economy of its aircraft. The authorities, including all those cited in the Brief in Opposition, p. 11, are in complete agreement that today the "nationality of aircraft is as incontestable as that of ships." J. P. Honig, The Legal Status of Aircraft, The Hague, Martinus Nijhoff (1956), p. 191. It is also agreed that the concept of nationality of aircraft is the same as that of ships. "In public international law the nationality of vessels and the nationality of aircraft indicate the responsibility of the flag State to other States for the conduct of the vessel or aircraft in question and the right of such vessel or aircraft to international protection by such state." John C. Cooper, National Status of Aircraft, 17 J. Air Law 292, 300 (Summer, 1950). The law of the flag is an integral part of the concept of nationality of a vessel or aircraft. "In view of this close relationship between a vessel and the nation whose flag it flies, that nation may take jurisdiction over an act occurring on the vessel." Rear Admiral Chester Ward, U.S.N., Projecting the

Law of the Sea into the Law of Space, J.A.G. Journal, March 1957, p. 3. While many authors express the need for treaties defining the extent to which the various aspects of the law of the flag as developed with respect to sea going vessels apply to aircraft, there is no dissent from the proposition that as a necessary corrollary of granting aircraft nationality, the doctrine of the law of the flag is applicable to govern the qualifications and conditions of employment of all persons serving on the aircraft. See authorities cited Petition for Certiorari, p. 20.

The Geneva Convention on the High Seas, signed by the United States on September 15, 1958, reprinted 52 Am. Journal of International Law 842 (October 1958), includes aircraft along with ships in its provisions dealing with piracy, Articles 15-22, inclusive, *ibid*, pp. 846-847. This convention for the first time made express the provision of nationality for ships already present for aircraft in the Chicago Convention on Civil Aviation. Thus Article 5 of the Geneva Convention provides "Ships have the nationality of the state whose flag they are entitled to fly." In addition Article 5 of the Geneva Convention provides: "There must exist a genuine link between the state and the ship; in particular the state must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag" (*ibid*, p. 843).

The provision in the Chicago Convention that each state has sovereignty over the air space above its territory, set forth in the Brief in Opposition, p. 11, in no way militates against the application of the doctrine of the law of the flag to the internal economy of the ship. This Court, as well as the authorities generally, recognizes the exclusive sovereignty of each nation over

its harbors and coastal waters within the three mile limit; but this has never been deemed inconsistent with the application of the law of the flag when the ship was within those areas. *United States* v. *Flores*, 1933, 289 U.S. 137, 155-156.

There is no principle of international law which militates against giving the Air Carrier Amendment to the Railway Labor Act its literal and plain meaning, namely, that it applies to all employees of American air carriers, no matter what their nationality, place of residence, or place of flight. Rather, principles of international law, recognize that the United States is the only power that can effectively govern the internal economy of its flag airplanes. Unless the Railway Labor Act applies, employment relations on board aircraft flying beyond our national boundaries will be governed by the common law, which Congress obviously meant to displace by either the National Labor Relations Act or the Railway Labor Act in all private employment subject to federal jurisdiction.

This Court should decide the important issue presented by this petition.

Respectfully submitted,

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